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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WILLIAM T. DIVANE, JR., et al.,)
)
Plaintiffs,)
)
vs.) No. 06 C 4100
)
ATASH INDUSTRIES, INC., et al.,)
)
Defendants.)

MEMORANDUM OPINION AND ORDER

Plaintiffs sued several companies and an individual for past due ERISA contributions. Defendants' motion for summary judgment was denied on December 22, 2006. They renew that motion and again we deny it.

The *res judicata* defense fails for reasons stated in the December 22, 2006, Memorandum Opinion and Order. Further, the uncollaborated assertion by John Puttwich that his payment of the \$15,500 left to pay on the settlement agreement with him was intended to settle everything is so implausible as to not rise to the level of undisputed facts, and it is, besides, denied.

Beyond that, we are somewhat confused as to what the disputes are. Plaintiffs seem to believe that defendants are disputing any successor liability. Defendants seem to be contending that plaintiffs cannot be a secured creditor. But those are separate issues. Further, defendants return briefly to issues raised in the first summary judgment attempt, that somehow the Illinois Uniform Fraudulent Transfer Act, and the Illinois Corporate Fiduciary Act, give them some protection from plaintiffs' claim, but the legal arguments are no more developed than they were the first time. We are left with the impression that plaintiffs may

be entitled to a judgment, although that has not been proved yet, but that any judgment will be at the end of a long line of creditors with priority whose liens are far more than the available assets. We deny the motion for summary judgment and set the matter for a status report at 9:15 a.m. on September 18, 2007.



JAMES B. MORAN
Senior Judge, U. S. District Court

Sept. 4, 2007.